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BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION  
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WILLIAM A. MUNDELL  
Chairman  
JIM IRVIN  
Commissioner  
MARC SPITZER  
Commissioner

In the matter of:

RONALD L. FANZO  
d/b/a INTERMARC MARKETING  
7127 East Becker Lane, Suite 90  
Scottsdale, Arizona 85254

RONALD L. FANZO  
d/b/a CASHFLOWS  
13020 North 96<sup>th</sup> Place  
Scottsdale, Arizona 85260

RONALD L. FANZO  
13020 North 96<sup>th</sup> Place  
Scottsdale, Arizona 85260

Respondent.

DOCKET NO. S-003448A-01-0000

**MOTION TO ALLOW  
WITNESS TO TESTIFY BY  
TELEPHONE AT HEARING**

(Before Hearing Officer Philip Dion)

(Expedited Ruling Requested)

Arizona Corporation Commission

**DOCKETED**

NOV 28 2001

DOCKETED BY

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**I. INTRODUCTION.**

The Securities Division (the "Division") of the Arizona Corporation Commission (the "ACC") hereby moves the Hearing Officer for permission to allow a witness to present testimony by telephone in the above-entitled matter. The Division also is requesting expedited consideration of its motion.

**II. FACTS**

On August 3, 2001, the Division served a Temporary Order to Cease and Desist in this matter alleging that Respondent Fanzo, dba Intermarc Marketing and dba Cashflows, violated the registration statutes of Arizona's Securities Act, and engaged in fraud in connection with the offers and sales of securities. The hearing is currently set to commence on December 3, 2001.

The Division anticipates calling as a witness in this matter Scott Brown, who invested

1 funds with Mr. Fanzo. Mr. Brown is expected to testify regarding his communications with  
2 Respondent, Fanzo's representations to him, and his investment with Fanzo. Mr. Brown is a  
3 resident of Sacramento, California. His testimony is expected to last approximately 30-45  
4 minutes.

5 In light of the extent of this testimony in comparison to the burdens of travel and time away  
6 from work, the Division believes the most efficient and fair solution would be to allow Mr. Brown  
7 to testify by telephone. Mr. Brown is beyond the subpoena power of the ACC, but has agreed to  
8 make himself available to testify by telephone.

### 9 III. ARGUMENT.

10 The purpose of administrative proceedings is to provide for fair, speedy and cost effective  
11 resolution of administratively justiciable matters. To effectuate that purpose, the Legislature has  
12 provided for streamlined proceedings and relaxed application of the formal rules of evidence.  
13 See A.R.S. § 41-1062(A)(1) (providing for informality in the conduct of contested cases), A.R.S.  
14 § 44-1973(B) (ACC not bound by technical rules of evidence). The evidence submitted in an  
15 administrative hearing need not rise to the level of formality required in a judicial proceeding, so  
16 long as it is "substantial, reliable and probative." A.R.S. § 41-1062(A)(1). The ACC has  
17 promulgated rules of practice and procedure to ensure just and speedy determination of all  
18 matters presented to it for consideration. See, e.g., A.A.C. R-14-3-101(B) (rules shall be liberally  
19 construed to secure just and speedy determination); R14-3-109(K) (relaxation of rules of  
20 evidence does not invalidate findings). Allowing this witness to testify by telephone retains all  
21 indicia of reliability and preserves Respondent's right to cross-examination.

22 Courts in other states have acknowledged that a witness's testimony taken by telephone in  
23 administrative and civil proceedings is permissible and consistent with the requirements of  
24 procedural due process. See *Babcock v. Employment Div.*, 696 P.2d 19 (Or. App. 1985) (court  
25 approved Oregon Employment Division's procedure to conduct entire hearing telephonically);  
26 *W.J.C. v. County of Vilas*, 369 N.W. 2d 162 (Wis. 1985) (court permitted telephonic testimony

1 by expert in commitment hearing). Both these courts concluded fundamental fairness weighed in  
2 favor of permitting testimony by telephone.

3 Public policy also favors allowing Mr. Brown to testify by telephone. The Division is  
4 able to allocate its limited resources judiciously to serve and protect the Arizona investing public.  
5 If this motion is granted, the Division will be able to save the costs of airfare, hotel, meals, and  
6 incidentals for Mr. Brown (who, in any case, as mentioned above, is beyond the ACC's subpoena  
7 power).

8 **IV. CONCLUSION.**

9 Permitting this witness to testify telephonically does not compromise Respondent's due  
10 process rights. The Division therefore respectfully requests that its motion to present the  
11 testimony of this witness by telephone be granted.

12 RESPECTFULLY submitted this 28<sup>th</sup> day of November, 2001.

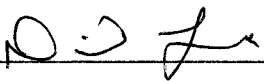
13 JANET NAPOLITANO  
14 Arizona Attorney General

15 By    
16

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Attorneys for the Securities Division of the  
Arizona Corporation Commission

1 Copy of the foregoing  
2 mailed this 28<sup>th</sup> day of  
November, 2001, to:

3 Ronald L. Fanzo  
4 13020 North 96<sup>th</sup> Place  
5 Scottsdale, Arizona 85260  
Respondent *Pro Per*

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